epilepsy, but one thing is clear that at no time throughout the trial did any witness lay or medical mention the word "epilepsy" nor was there any expert evidence before the Court to say that epilepsy either can or must cause unsoundness of mind which is the expression used in the Penal Code. What the trial Judge clearly had in mind was that such medical evidence as there was was all in favour of the appellant being sane and that, as he pointed out, there was in existence some other evidence relating to the mental condition of the accused in the evidence of the Superintendent of the Mental Hospital at Tanjong Rambutan, presumably some sort of an expert, but it was for the defence to call that evidence and if they did not do so the jury might safely draw the unfavourable inference provided for by section 114(g) of the Evidence Ordinance, that is to say that if called it would be unfavourable to the accused.

We have listened to a great deal of discussion on the point. For ourselves we see no reason to differ from the judgment of the Court of Criminal Appeal in the case of *Casey*[3]. We are not overlooking the argument addressed to us based on our own decision in the case of *Goh Ah Yew* v. *Public Prosecutor*[4]. That case, however, is hardly in point. In fact it is very difficult to see that it has any relevance at all. The point in that case was that the prosecution had relied on section 114(g) of the Evidence Ordinance to suggest that the evidence of a witness who was not called by the defence would not have corroborated the evidence of the appellant himself. To our minds, however, that has no bearing at all on a case where insanity is raised as a defence in a criminal case, because in such a case there is an onus on the defence, that is to prove that the accused was insane.

Having said that, I return to *Casey's case*. With respect, we accept what was decided in that case and we say here that it is for the defence to call any witness whose evidence is directed to the issue of insanity and that the duty of the prosecution is limited to supplying the defence with a copy of any report or statement of any Prison Medical Officer who can give evidence on that issue and to making such person available as a witness for the defence. At one stage or another the defence knew that the Principal Officer, Pudu Jail, the Medical Officer in charge of Prisons and the Medical Superintendent at Tanjong Rambutan were in a position to give evidence if called upon as to the accused's state of mind. It was for the defence to call such of these witnesses as they saw fit and if they did not do so that was a fair subject of comment. We find therefore that there is no cause for complaint as regards the trial Judge's summing-up on this point.

There remains the question of the letters. In fact there were in existence letters some of them written by the accused to the deceased and some of them written by the deceased to the accused all of which were tendered in evidence. The effect of these letters was opened to the jury. They were told that accused and deceased wrote letters to one another in endearing terms and the prosecution alleged there was thus disclosed more than mere friendship. They were said to afford a motive which was alleged to be jealousy.

In due course these letters were tendered and were proved to be in the handwriting of the deceased and of the accused respectively. At one stage the Judge was disposed to admit, and indeed said he would admit, the letters written by the deceased but on pressure from counsel for the appellant who seems to have conducted the defence with very great spirit he changed his mind and he decided that they should not be admitted on the ground that they did not refer to the cause of death of the deceased person who had written them. He thereupon made a note that in his opinion (and we would agree with him) no harm had been done because the letters had neither been shown nor read to the jury.

As regards the letters written by the accused these were letters in his own handwriting addressed to the person whom he subsequently killed and whatever their bearing on the cause of death (and the trial Judge was at some pains to make it clear that in his opinion they had very little bearing) they clearly were admissible for what they were worth and indeed their admissibility was not objected to by the defence at the trial. They were rightly admitted although in our view they could have had little effect on the trial one way or another in view of what the Judge said in his summing-up to the jury.

In all the circumstances of the case we think there is no course open to us but to dismiss the appeal, which we do.

Appeal dismissed.

CHAN TONG v. REGINA

[C. C. A. (Rose C.J., Tan Ah Tah and Wee Chong Jin JJ.) June 8, 1960]

[Singapore — Criminal Appeal No. 2 of 1960]

Criminal Law — Murder conviction — Non-direction on provocation — Substitution of verdict of culpable homicide not amounting to murder — Abuse or scolding words — Whether amount to provocation.

If a person is tried on a charge of murder, and there arises on the whole of the evidence the question whether or not the offence might be culpable homicide not amounting to murder only on the ground of provocation or any other ground, then, whether the defence has relied on it or not the Judge must put the question to the Jury.

In this case the appellant, who was charged with, and convicted of, murder, had alleged that he was seated in his room eating his evening meal when the deceased and several members of her family congregated outside his door and scolded him in respect of the previous evening's episode. The deceased according to the appellant, challenged him to come outside his room to meet her husband. The appellant also alleged that he was physically assaulted and thereby he committed the alleged offence under grave and sudden provocation, but the prosecution case was that there was no provocation at all. The learned trial Judge in his direction to the Jury said, "Mere words cannot in law ever amount to provocation, members of the Jury. The accused's case,

on the other hand, is that he was set about and beaten up and in order to save himself from the position he was in he lashed out with his hand. So again, I impress on you the importance of finding your facts." It is fair to assume that the Jury would have understood the learned trial Judge's phrase "mere words cannot in law ever amount to provocation" as meaning no more than "mere abuse cannot in law ever amount to provocation." It would appear therefore that the learned trial Judge directed the Jury to disregard the element of abuse or scolding, which was the term recorded as having been used by the witnesses. If the appellant's case was true, the scolding would have amounted to provocation, and therefore the whole picture of the events, covering both the words spoken and the actions taken by the protagonists on the evening of the incident and of the preceding evening, should have been presented to and left with the Jury for them to make up their minds, on all the material, as to whether or not the appellant could reasonably have been said to have been deprived of the power of self control by grave and sudden provocation.

Cases referred to:—

(1) *Kwaku Mensah* v. *The King* [1946] A.C. 83.

(2) *Bullard* v. *The Queen* [1957] A.C. 635 at p. 643; [1957] 3 W.L.R. 656, at p. 661.

COURT OF CRIMINAL APPEAL.

D. S. Marshall for the appellant.

A. W. Ghows (Deputy Public Prosecutor) for the respondent.

Rose C.J.: The substantial ground of appeal in the present matter is that the learned trial Judge did not direct the Jury adequately on the question of provocation.

The learned trial Judge dealt with the matter in the following terms:—

"Another defence which arises to be considered on the accused's evidence is that of provocation, and such a defence, if you think it reasonably possible on the evidence, would reduce the crime again from murder to culpable homicide not amounting to murder. If the accused whilst deprived of the power of self-control by grave and sudden provocation killed the deceased, that would not be murder but culpable homicide not amounting to murder; and whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact for you to consider. The prosecution case here is that there is no provocation at all. Mere words cannot in law ever amount to provocation, members of the Jury. The accused's case, on the other hand, is that he was set about and beaten up and in order to save himself from the position he was in he lashed out with his hand. So, again, I impress on you the importance of finding your facts".

In the particular context of the facts of this case it is fair to assume that the Jury would have understood the learned Judge's phrase "mere words cannot in law ever amount to provocation" as meaning no more than "mere abuse cannot in law ever amount to provocation".

It would appear therefore that the learned trial Judge directed the Jury to disregard the element of abuse or scolding, which was the term recorded as having been used by the witnesses.

While we do not suggest that the Jury, if properly directed, would be likely to have come to any other verdict but that the appellant was guilty of murder we consider that the whole picture of the events, covering both the words spoken and the actions taken by the protagonists on the evening of the 8th of August, 1959 and of the preceding evening, should have been presented to and left with the Jury for them to make up their minds, on all the material, as to whether or not the appellant could reasonably have been said to have been deprived of the power of self control by grave and sudden provocation.

On the prosecution case standing alone we could not quarrel with the learned Judge's observation that there was "no provocation at all". But the case as put forward by the defence, while primarily one of self-defence or, alternatively, of exceeding the right of self-defence, nonetheless contained the further element of provocation by a mixture of words and acts on the part of the deceased woman and the members of her family. The defence version of the affair was that on the evening of the 7th of August the appellant had occasion to chastise his daughter for having stolen part of his day's takings from his occupation as an ice seller. The deceased and her family took the side of the appellant's daughter in the matter and, according to him, were guilty of interference in his internal affair.

Words were exchanged and resentment remained after the parties had separated.

On the following evening, according to the appellant, he was seated in his room eating his evening meal when the deceased and several members of her family congregated outside his door and scolded him in respect of the previous evening's episode. The deceased, according to him, challenged him to come outside his room to meet her husband. The appellant also alleged that he was physically assaulted. The Jury unhesitatingly rejected the fact of such assault in the context of the defences of self-defence, but we find ourselves unable to say positively that leaving aside the question of self-defence, the physical aggression alleged by the appellant to have taken place coupled with the scolding, which must be regarded in the context of the resentment engendered by the previous evening's episode, did not amount to material which would entitle the Jury, had they so wished, to bring in a verdict of culpable homicide not amounting to murder on the ground of provocation.

While, as we have already said, such a verdict on the part of the Jury would not have been likely, it would not, in our view, have been perverse. The matter, therefore, in our opinion, was one which should have been left for their consideration.

We would add that the view we have taken in this matter would seem to be consistent with the principles enunciated in the two Privy

Council cases of *Kwaku Mensah* v. *The King*[1] and *Bullard* v. *The Queen*.[2]

Having regard to the circumstances of this case, we do not consider that it would be appropriate to apply the proviso to section 6(1) of the Court of Criminal Appeal Ordinance; nor did learned Crown Counsel invite us to do so.

This is sufficient to determine the appeal. And it was for these reasons that we stated at the conclusion of the hearing of the appeal that we set aside the verdict of guilty of murder and substituted one of guilty of culpable homicide not amounting to murder; and sentenced the appellant to 10 years' imprisonment.

Verdict substituted.

Solicitors: *Marshall & Chung.*

Re M. A. NAMAZIE, DECD.

[O. C. J. (Ambrose J., C. H. Williams and Teo Yeok Soon, Assessors) June 9, 1960]

[Singapore — Land Acquisition No. 1 of 1958]

Land acquisition — Potentiality for development of coastal strip into building lots — Principles applicable — Land Acquisition Ordinance (Cap. 248).

On the 22nd March, 1957, a notification was published in the Singapore Government Gazette declaring that a certain piece of land comprising an area of about 406 acres was needed for a public purpose, namely, agricultural settlement. The Collector of Land Revenue awarded the sum of $488,092.50c. as the market value of the land on the relevant date, basing the award on the present use of the land and its primary use in the future as a rubber estate. Objection having been taken to the award, the matter was referred to the High Court.

Held: (1) potentialities of the land must be taken into account in assessing its market value;

(2) the Court must contemplate the sale of the land as a whole, unless it appears that the necessary legal consents to a subdivisional plan had been given, and a survey on the ground at the relevant date would have disclosed that the land or some part of it was in fact so far subdivided that the subdivided parts could at that date have been immediately sold and title given to individual purchasers, in which case the parts so subdivided may be separately valued for the purpose of arriving at the total amount of compensation;

(3) if the land has to be valued as a whole, the Court, in assessing the potentialities, may take into account the suitability of the land for subdivision, the prospective yield from a subdivision, the costs of effecting such a subdivision, and the likelihood that a purchaser acquiring the land with that object would allow some margin for unforeseen costs, contingencies and profit for himself;

(4) the land, in the circumstances of this case, must be valued as a whole; there was one potentiality realizable in the foreseeable future, namely, the development of a coastal strip, about 40 acres in area, into building lots; and upon consideration of the matters to be taken into account as stated above, the market value of the land must be increased from $488,092.50c. to $610,125.

Case referred to:—

(1) *Maori Trustee* v. *Ministry of Works* [1959] A.C. 1.

The following cases were also cited in argument:

R. V. N. Gajapatriraju v. *The Revenue Divisional Officer, Vizagapatam* [1938] A.C. 302; *Er Boon Yan & Ors.* v. *The Collector of Land Revenue, Port Dickson* [1955] M.L.J. 133; *Government* v. *The Century Spinning and Manufacturing Co., Ltd.*, A.I.R. 1942 Bom. 105; *Abu Bakar bin Haji Abdul Rahman* v. *The Collector of Land Revenue, Malacca* [1950] M.L.J. 209.

REFERENCE under section 19 of the Land Acquisition Ordinance.

N. A. Mallal for the applicants.

M. Karthigesu for the Collector of Land Revenue.

Cur. Adv. Vult.

Ambrose J.: This is a reference to this Court under section 19 of the Land Acquisition Ordinance (Cap. 248) on the application of the trustees of the estate of M. A. Namazie, deceased, who object to the amount of compensation awarded in respect of a piece of land acquired by the Government for an agricultural settlement. This land consists of Lots 77, 25 and 10-3, Mukim XII, Singapore, which are respectively comprised in Lease 4158 for 99 years from 1929, Statutory Grant 26839, and Statutory Grant 26840. The total area of the land is 406 acres 2 roods and 39 poles. The declaration under section 5 of the Ordinance that these lands were required for a public purpose, namely, agricultural settlement, was published in the Government Gazette on the 22nd March, 1957. The award of compensation made by the Collector of Land Revenue amounts to $508,092.50c.

The main question to be decided by us is the market value of the land on the 22nd April, 1955, which is the date laid down in section 2 of the Land Acquisition (Temporary Provisions) Ordinance, 1955.

The land is situated on the west side of Lim Chu Kang Road, Singapore. Its eastern boundary extends along the road between the 19th and 20th milestone for a distance of about 3,600 feet. Its western boundary extends along the foreshore of Singapore for a distance of about 4,600 feet. Lot 77 has an area of about 56 acres and consists of the Sungei Melayu valley, about 10 acres of mangrove swamp, and about 15 acres of ordinary swamp. The assessors have inspected the land and agree with the view expressed by Mr. W. E. Reeve, the Government Valuer, that it is a semi-derelict rubber estate. An area of about 37½ acres consists of immature rubber trees planted in 1941. The manager's bungalow was destroyed during the Japanese invasion in 1942. An area of about 55 acres of rubber trees was cleared during the Japanese occupation and is now covered with scrub. An area of about 90 acres of rubber trees was destroyed by fire in 1956. An area of about 93½ acres is fully planted with mature rubber trees.

Mr. C.W.A. Sennett, a licensed appraiser called by the applicants, values the land at $1,016,875, calculated at the price of $2,500 an acre, after taking into consideration the potentialities for development of the land. He values the buildings on the land at $136,208. We think that Mr. Sennett's valuation is exaggerated.